IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 18 OF 2005

State
Through Public Prosecutor,
High Court of Bombay at
Panaji. ... Applicant

versus

Shri Cajetan Oliveira @ Cajy
S/o Rosario Oliveira,
33 years, R/o H.No.29,
Ilhas de Rachol,
Salcete, Goa. ... Respondent

Mr. S. N. Sardessai, Public Prosecutor for the Applicant.

Mr. Y. V. Nadkarni, Advocate for the Respondent under Legal Aid Scheme.

CORAM :N. A. BRITTO, J.

DATE :27TH OCTOBER, 2005.

ORAL ORDER

The State has preferred this revision application against the Order dated 27-5-2005 of the learned Additional

Sessions Judge, Margao, discharging the accused under Section 489-C of I.P.C.

2. Charge-sheet was filed against the accused by Margao Town Police Station with the allegation that on 7-12-2001 the accused when searched was found in possession of 12 counterfeit currency notes of Rs.500/- each and thus, the accused had committed an offence punishable under Sections 489-A, 489-B and 489-C of I.P.C. From the facts stated in the complaint, it appears that on 16-12-2001, P.S.I. Shirwaikar of Margao Town Police Station was deputed by the Police Inspector to secure the presence of the accused as the said Police Inspector had received information that the accused was spending lavishly particularly new notes of Rs.500/-, which were suspected to be counterfeit and accordingly, the said Police Sub Inspector had gone to the New Market, Margao in search of the accused but the accused was not available. On 6-12-2001 at about 19.00 hours, P.S.I. Shirwaikar is stated to have noticed the accused near Damodar Pedda and on seeing him, the accused changed the direction and rushed towards the New Market and the said Police Sub Inspector followed him and caught the accused and was further

informed that they had information that the accused was dealing with counterfeit notes whereupon the accused is said to have stated that he had lot of cash on his person and he did not have any counterfeit notes with him and in order to verify the same, he was taken into custody under Section 41 of the Code of Criminal Procedure, 1973 and upon search being taken 12 suspected currency notes of Rs.500/- each were found in possession of the accused. There is no dispute that in all, the accused had 39 notes of Rs.500/-, 42 notes of Rs.100/- and notes of other denominations, totalling to Rs.35,015. As per the investigation case papers, the said notes on visual examination appeared to be counterfeit as the paper quality was found thicker than the normal notes, the inking of printed letters was blurred and the colour was out of the ordinary in comparison with the original notes and the silver line also was found to be uneven. The notes were subsequently examined with the help of a money discerner machine and found to be counterfeit. Ultimately, the said notes were sent to India Security Press, Government of India which has confirmed that the said 6 notes of Rs.500/- were counterfeit and that the said notes also had resemblance with the currency notes seized in Crime

No.463/2000 of Oshiwara Police Station, Mumbai. There is also no dispute that on the next date, a house search of the accused was conducted but nothing incriminating was found in the said house of the accused. At the time of hearing of arguments before framing of charge, it appears that the prosecution restricted their case only to Section 489-C of I.P.C. which reads as follows:-

> "**489-C. Possession of forged or counterfeit notes or bank notes** - Whoever has in his possession any forged or counterfeit currency notes or bank notes knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for the term which may extend to seven years, or with fine, or with both".

3. There is no dispute that the said 6 counterfeit notes of Rs.500/- each were along with the other cash in possession of the accused and, therefore, it could be certainly presumed that the same were intended to be used as genuine. The entire

controversy appears to have been centered around the fact whether the accused was in possession of the said notes "knowing or having reason to believe the same to be forged or counterfeit", and the learned Additional Sessions Judge came to the conclusion that the accused could not be convicted since there was absolutely no material to show that the accused had knowledge or reason to believe that the said notes were counterfeit and on coming to the said conclusion the learned Sessions Judge observed that there was no whisper in the complaint about the knowledge of the accused that the said notes were counterfeit.

4. Mr. S. N. Sardessai, the learned Public Prosecutor has submitted that the accused is presumed to have known that the said notes were counterfeit because on a mere observation by naked eye they could be seen that they were counterfeit. Mr. Sardessai, has further submitted that the fact that the accused tried to run away from the Police would further show that the accused knew that he was in possession of the said counterfeit notes.

5. On the other hand, Mr. Y. V. Nadkarni, the learned Counsel appearing on behalf of the accused has submitted that the conclusion recorded in the complaint that the said notes appeared to be counterfeit was only after the same were verified with the said money discerner machine and that there is no such opinion expressed in the panchanama which was done earlier in point of time then lodging of the said complaint. Mr. Nadkarni, has further submitted that the mere fact that the said money discerner machine had to be brought shows that the notes did not resemble on mere appearance to be counterfeit. Mr. Nadkarni has placed reliance on the cases of **Abdul Majeed Abdul Reheman Sarkhot** v. **State of Maharashtra**(2001(4) Mh.L.J.111) and **Umashanker** v. **State of Chhattisgarh**((2001)9 SCC 642). In the first case of **Abdul Majeed Abdul Reheman Sarkhot** v. **State of Maharashtra**(supra) the accused who was a businessman had tendered a note of Rs.100/- at the time of payment of electricity bill and the allegation made was that he intended to use the same as a genuine currency note. In this background, this Court observed that mere possession of the said note would have no presumption of the knowledge of the note and that in order to bring a case under Section 489-C of I.P.C., it should be

established that the note must be used knowing fully well that the note was a counterfeit one. In the case of **Umashanker** v. **State of Chhattisgarh** (supra) also what was presented for payment was one note of Rs.100/- to purchase a kilo of mangoes costing Rs.5/- and the accused was caught and handed over to the Police and in that context, the Supreme Court had observed that the mens rea of offences including under Section 489-Cof I.P.C. is "knowing or having reason to believe the currency notes or Bank notes are forged or counterfeit" and without the said mens rea no offence under Section 489-C can be made out. The facts stated in the said two cases are quite dissimilar from the facts alleged in the case at hand, apart from the fact that the observations made therein were made at the conclusion of the trial.

6. The learned Additional Sessions Judge has observed that the accused could not be convicted since there was absolutely no material to show that the accused had knowledge or reason to believe that the notes were counterfeit. It is to be noted that the stage was only of framing of charge at which stage, a Court is required only to consider the general probabilities of the case and not whether eventually the accused would be convicted or acquitted. In this context, reference could be made to the case of **State of Maharashtra** v. **Som Nath**

Thapa(AIR 1996 SC 1744) wherein the Supreme Court, speaking through three learned Judges, inter alia, observed that the materials brought on record by the prosecution at that stage has got to be accepted as true and that on the basis of the materials on record a Court has come to the conclusion that the commission of the offence was a probable consequence and that if that is so, a question of framing of charge exists. The Apex Court noted that if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probable value of the materials on record cannot be gone into, the materials brought on record by the prosecution has got to be accepted as true at that stage.

7. The learned Additional Sessions Judge has not considered the case of the prosecution on broad probabilities of the case to find out whether there were materials for framing of charge but has proceeded to consider the case of the prosecution on the assumption that the accused could not be convicted on the materials produced. There may be a slight divergence as far

as the naked eye examination of the notes is concerned as given in the panchanama and as stated in the complaint of the P.S.I. Shirwaikar but prima facie, the fact remains that the said notes on a mere look did appear to be counterfeit. It was also stated by the Police Sub Inspector that they had prior information that the accused was lavishly spending new notes of Rs.500/- and on that count they wanted to interrogate the accused. It was also stated by Police Sub Inspector that the accused on seeing the said Police Sub Inspector tried to run away from him and he was followed and caught.

8. With the aforesaid facts and circumstances which had to be accepted as true, in my view, knowledge that the said notes were counterfeit could be prima facie attributed to the accused and that being the position, the learned Additional Sessions Judge fell into error in discharging the accused observing that the materials produced by the applicant would be insufficient to base a conviction.

9. In the light of the above, the impugned Order of the learned Additional Sessions Judge, deserves to be set aside.

Consequently, the learned Additional Sessions Judge is hereby directed to frame a charge against the accused under Section 489-C of I.P.C. and try the accused in accordance with law.

N. A. BRITTO, J.

RD.